

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DESERT ORCHID PARTNERS, L.L.C.,)
individually and on behalf of all others)
similarly situated,)
Plaintiff,)

v.)

TRANSACTION SYSTEMS)
ARCHITECTS, INC., WILLIAM E.)
FISCHER, GREGORY J. DUMAN,)
DWIGHT G. HANSON, DAVID C.)
RUSSELL, and EDWARD FUXA)
Defendants.)

8:02CV553

ORDER

NANCY ROSEN, individually and on)
behalf of all others similarly situated,)
Plaintiff,)

v.)

TRANSACTION SYSTEMS)
ARCHITECTS, INC., WILLIAM E.)
FISCHER, GREGORY J. DUMAN)
DWIGHT G. HANSON, DAVID C.)
RUSSELL, and EDWARD FUXA,)
Defendants.)

8:02CV561

ORDER

This matter is before the court on the appeals of lead plaintiff Genesee County Employees' Retirement System ("Genesee," Filing Nos. 331 in 8:02CV553 and 373 in 8:02CV561, of the orders of the United States Magistrate Judge ("magistrate") dated June 28, 2006, Filing Nos. 329 in 8:02CV553 and 371 in 8:02CV561. In those orders, the magistrate imposed sanctions in connection with a motion to compel. Genesee objects to

the magistrate's imposition of sanctions, contending that its position in the underlying dispute was substantially justified.

On review of a decision of the magistrate on a pretrial matter, the district court may set aside any part of the magistrate's order that it finds is clearly erroneous or contrary to law. 28 U.S.C. § 636 (b)(1)(A); Fed. R. Civ. P. 72(a); *In re Lane*, 801 F.2d 1040, 1042 (8th Cir. 1986). See also *Bialas v. Greyhound Lines, Inc.*, 59 F.3d 759, 764 (8th Cir. 1995) (noting "a magistrate is afforded broad discretion in the resolution of nondispositive discovery disputes").

Genesee has not shown the magistrate's finding is either clearly erroneous or contrary to law. The court agrees that Genesee failed to show substantial or legal justification for its failure to provide requested verifications and discovery responses. The magistrate has twice rejected the plaintiff's contention regarding the timing of its responses, and has specifically stated that the court would "not allow the plaintiffs to delay responses any longer." Filing Nos. 301 in 8:02CV553 and 343 in 8:02CV561; Filing Nos. 329 in 8:02CV553 and 371 in 8:02CV561. The court agrees that the plaintiffs acted in clear contravention of the civil rules. Accordingly,

IT IS ORDERED that lead plaintiff Genesee's appeals, Filing No. 310 in 8:02CV553 and Filing No. 352 in 8:02CV561, of the magistrate's orders dated June 28, 2006, are denied.

DATED this 25th day of July, 2006.

BY THE COURT:

s/ Joseph F. Bataillon

JOSEPH F. BATAILLON
United States District Judge